

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

SHANE L. CANNON,

CASE NO.: 15-30451-KKS

CHAPTER: 7

Debtor.

ORDER OVERRULING, WITHOUT PREJUDICE, DEBTOR'S
OBJECTION TO CLAIM (DOC. 77)

THIS MATTER is before the Court on the Debtor's *Objection to Claim* (the "Objection," Doc. 77) and the response in opposition filed by Beach Community Bank ("BCB") (the "Response," Doc. 82). For the reasons set forth, the Objection is due to be overruled, without prejudice.

BCB has filed six (6) proofs of claim; the Objection is directed to Claim 2. The basis for Claim 2 is a pre-petition judgment entered in state court in favor of BCB against the Debtor and two non-debtors (Claim 2-1, p. 5). The Objection alleges that Claim 2 should be disallowed because in 2016 BCB filed a "Notice of Voluntary Dismissal with Prejudice of Entire Action" in the state court case from which the judgment arose, and recorded a "Satisfaction of Judgment," which on their face released all defendants to the state court action, including the Debtor. Robert Giglio,

Debtor's father-in-law, filed a similar objection.¹ BCB does not deny filing and recording these documents, but claims that they released Debtor due to a "scrivener's error," and is seeking leave to attempt to revise or amend these documents.²

At a hearing on the Objection and Robert Giglio's objection the Court requested briefing on the threshold issue of standing to object to BCB's claim. Based on that briefing, the Court determines that the Objection is premature; Debtor does not currently have standing to object to claims.

Section 502(a) of the Bankruptcy Code provides that a claim or interest is deemed allowed unless a party in interest objects.³ In a Chapter 7 case, the Chapter 7 Trustee is usually the proper party to review and object to claims.⁴ The term "party in interest" is not defined by the code, but it is typically one who has a pecuniary interest in the estate being administered.⁵ Generally, a Chapter 7 debtor does not have standing to

¹ *Robert Giglio's Objection to and Motion to Determine Sufficiency of Claim No. 2* (Doc. 74).

² *Beach Community Bank's Motion for Relief from the Automatic Stay* (Doc. 78).

³ 11 U.S.C. § 502(a).

⁴ *In re Mohr*, 538 B.R. 882, 885 (Bankr. N.D. Ga. 2015).

⁵ *In re Charter Co.*, 68 B.R. 225, 227 (Bankr. M.D. Fla. 1986).

object to claims because the debtor has no pecuniary interest in the distribution of the estate's assets.⁶ Exceptions to that general rule include: 1) where there could be surplus that would inure to the debtor's benefit; or 2) where a claim will not be discharged.⁷

This is not a surplus case. But, it is possible that Debtor's liability, if any, to BCB on Claim 2 (and to all other creditors) will not be discharged. BCB has sued to deny Debtor's discharge, and that suit remains pending.⁸ If BCB prevails in its suit and Debtor's discharge is denied, then Debtor *potentially* will have standing to prosecute an objection to Claim 2.

Even if Debtor currently had standing, it is premature to consider objections to claims because the Trustee has not collected any assets for distribution to creditors. The purpose of objecting to claims is to determine which filed claims will be allowed for purposes of distribution of assets collected by the Trustee.⁹ To date, the Trustee has collected \$0 and has identified only one potential asset: approximately \$60,000.00

⁶ *In re Lona*, 393 B.R. 1, 4 (Bankr. N.D. Cal. 2008).

⁷ *See Id.*; *see also In re Mohr*, 538 B.R. at 885.

⁸ Adv. No. 15-03014-KKS.

⁹ *See In re Bailey*, 2010 WL 4702354 at *3 (Bankr. N.D. Ga. Nov. 17, 2010); 4 *Collier on Bankruptcy* ¶ 502.02[2][a] (Alan N. Resnick & Henry J. Somer, eds., 16th ed.2009).

being held pursuant to a pre-petition garnishment on a bank account in the name of a third party corporation, SLC Investments, Inc. (“SLC”).¹⁰ This money is the subject of a pending adversary proceeding.¹¹ If the Trustee prevails in his adversary proceeding, then this \$60,000 will come into the instant bankruptcy estate, subject to Mr. Giglio’s claim of ownership. If the Trustee is unsuccessful, the \$60,000 will remain the property of SLC, or of Mr. Giglio, subject to the garnishment. In that event, there will be nothing for the Trustee to distribute to creditors. If there is nothing to distribute to creditors, there is no reason to take up valuable judicial and attorney time and effort determining objections to claims, because no parties who filed claims, including BCB, will receive any distribution from this estate.¹²

At such time as there is money to distribute to creditors, and in the event that BCB successfully blocks Debtor’s discharge, then Debtor may have standing to pursue an objection to Claim 2.

¹⁰ Doc. 61.

¹¹ Adv. No.: 16-03015-KKS.

¹² *Kipp Flores Architects, L.L.C. v. Mid-Continent Casualty Co.*, 852 F.3d 405, 412-413 (5th Cir. 2017); *In re Holland*, 2015 WL 4600382 at *2 (Bankr. S.D. Ga. July 30, 2015); *In re Shapiro*, 188 B.R. 140, 148 (Bankr. E.D. Pa. 1995).

For the reasons stated, it is

ORDERED:

1. Debtor's Objection (Doc. 77) is **OVERRULED**, without prejudice.

The continued hearing scheduled for June 6, 2017 is **CANCELED**.

2. The Court reserves jurisdiction to determine whether issues pertaining to the "Notice of Voluntary Dismissal with Prejudice of Entire Action" and Satisfactions of Judgment filed and recorded by or on behalf of BCB, should be decided in this Court or in the state court.
3. Nothing in this Order shall preclude or stay Debtor from defending against any attempt by BCB in this or state court to amend or modify the "Notice of Voluntary Dismissal with Prejudice of Entire Action" and Satisfactions of Judgment, filed and recorded by or on behalf of BCB.

DONE and ORDERED on June 5, 2017.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: all parties in interest

Attorney Robert Rushing is directed to serve a copy of this document on all parties and file a certificate of service within three (3) days of this Order.